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IN THE

Supreme Court of the United States

October Term, 1983

No. 83-848

IGNACIO DELEON MARTINEZ,
JESUS CHAVARRIA GARCIA,

Petitioners,

v.

UNITED STATES ATTORNEY GENERAL
WILLIAM FRENCH SMITH, ET AL
UNITED STATES OF AMERICA,

Respondents.

PETITIONERS' THIRD SUPPLEMENTAL BRIEF INVITING ATTENTION TO THE 3/1/84 ADMISSIONS BY THE UNITED STATES IN ITS APPEAL TO THE FIFTH CIRCUIT OF AN EXCLUSIONARY ORDER IN UNITED STATES V. CRAWFORD ENTERPRISES, INC. Cr. No. H-82-224 (S.D.Tex.)

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The Court's attention is invited to the admissions against interest in the United States' March 1, 1984 brief ("3/1/84 Brief") to the Fifth Circuit.[1] The admissions involve the Petitioners Third Argument (Petition pp. 19-23) and amplify the discussion of the *Crawford* case exclusionary order discussed in Petitioners Second Supplemental Brief at pages 2-4.

The United States failed to trace monies involved in the *Crawford* case to Swiss bank accounts which the United States believed were controlled by Ignacio DeLeon Martinez ("DeLeon") and Jesus Chavarria ("Chavarria"). The United

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[1] The Court's attention is also invited to the Petition for Writ of Certiorari filed by George McLean in *United States* v. *International Harvester Company*, 720 F.2d 418 (5th Cir. 1983). (See Petitioners' Supplemental Brief filed 12/28/83).

States indicated that it would seek to prove by circumstantial evidence that monies reached Switzerland. After considering certain defendants' motions in the *Crawford* case Judge Cire, on January 24, 1984, issued his order in the Crawford case denying to the United States the right to introduce evidence relating to the tracing of monies to Switzerland.[2] The United States appealed Judge Cire's exclusionary order to the Fifth Circuit and on March 1, 1984 filed its brief in support of its appeal.[3]

The United States stated in the *Crawford* Indictment and the *Harvester* Information that bribes had been paid to the Petitioners by two defendants in the *Crawford* case (Appendix A, p.1). The conflicting March 1, 1984 admissions by the United States are that:

1) There are no eyewitnesses to any delivery of funds to the Petitioners. (Appendix A, p.2).

2) $133,424.75 was traced to a bank account in the name of Proquimex S.A., a corporation owned by DeLeon which amount was the only direct proof of payment. (Appendix B, p.2).

3) All additional proof of payment of alleged bribes is circumstantial. (Appendix B, p.2).

4) A central hypothesis of the *Crawford* case and a disputed issue, is that the Pemex officials, DeLeon and Chavarria, were to receive bribe payments. (Appendix B, p. 4).

The Petitioners have previously pointed out that notwithstanding the allegations in the accusatory pleadings in the *Crawford* and *Harvester* cases about the payment of bribes to the Petitioners, the United States had no actual proof of payment of bribes to the Petitioners (Petition, p. 9; 2nd Supp. Brief, pp. 3, 4 — footnotes 1 and 2). The variance between the bribe allegations by the United States and actual fact is best understood by a review and comparision of the allegations in Appendix A with

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[2] Petitioner's Second Supplemental Brief, p. 9.

[3] *United States* v. *Crawford Enterprises, Inc.*, Docket No. 84-2064 (5th Cir. 1984).

the admissions against interest and equivocations by the United States in the 3/1/84 Brief. (Appendix B).

THE BRIGGS RULE AND JUST DISPOSITION OF ISSUES

The United States' description of the Petitioners as participants in a bribery scheme and as recipients of bribes violated the Petitioners' rights under the Fifth and Sixth Amendments to the Constitution of the United States, as clearly stated in *United States* v. *Briggs*, 514 F.2d 794 (5th Cir. 1975); *In re Smith*, 656 F.2d 1101 (5th Cir. 1981).

The United States, in an attempt to salvage its position in the *Crawford* case, has now admitted that it has no direct or eyewitness proof of the payment of bribes to DeLeon and Chavarria, but appeals to the Fifth Circuit to be allowed to introduce circumstantial evidence which "tends to link", "tends to establish", is "consistent with the purpose and plan" that supports the United States' disputed "cential hypothesis" in the *Crawford* case, i.e. bribes were paid to the Petitioners.

The accusatory pleadings in the *Crawford* and *Harvester* cases and the 3/1/84 Brief were signed on behalf of the United States by the same U.S. Trial Attorney. The attorney's signature should constitute a certification by him that he had read the documents and that to the best of his knowledge and belief there were good grounds to support the positions taken in the accusatory pleadings and the brief.

It staggers one's imagination as to how the United States in 1982 can state that bribes had been paid to the Petitioners and in 1984 admit that there is no eyewitness or direct proof of the payment of bribes to the Petitioners.

The need for an equitable and just disposition of the issues surrounding the United States' violations of the Petitioners' constitutional rights, as mandated by *Krippendorf* v. *Hyde*, 110 U.S. 276 (1884) and *Precision Instrument Mfg. Co.* v. *Automatic Machine Co.*, 324 U.S. 806 (1945), is demonstrated by:

1) The 1982 bribe allegations by the United States and the 1983 and 1984 admissions that the United States had neither eyewitness nor direct proof that bribes were paid to the Petitioners; (Appendix A; Petition p. 9; 2nd Supp. Brief pp. 3, 4)

2) The Petitioners' unsuccessful 1982 administrative and judicial attempts to stop future and correct past bribery accusations against the Petitioners (Petition p. 6); and

3) The United States "double standard" for applying the *Briggs* rule as evidenced by the United States' argument in the *Kilpatrick* case coupled with the Solicitor General's decision, after obtaining two extensions, not to file a brief opposing this Court's review of the case. The declination supports an inference that the Solicitor General cannot reconcile or justify a double standard usage of the *Briggs* rule.

4) The absence of a procedure whereby the Petitioners can be relieved of the opprobrium resulting from the United States' bribery accusations.

This Court should take jurisdiction of this cause and speak to the issue as to when the espousal of legitimate prosecutorial interests ends and the invasion of a person's constitutional rights commences.

Respectfully Submitted,

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APPENDIX A

Allegations in accusatory pleadings by the United States in respect to Ignacio DeLeon Martinez and Jesus Chavarria.

1. Sections 19 and 25 of the *Crawford* Indictment state:

(19) It was a part of the conspiracy that defendant CEI and CRAWFORD would and did offer, agree to pay and pay to Chavarria and * bribes equalling approximately 4.5% of each Pemex purchase order for compression equipment systems in which defendant CEI participated.

(25) It was further a part of the conspiracy that defendants CEI, CRAWFORD and HALL, assisted by Cemco, defendants EYSTER and SMITH for Ruston, defendants MCLEAN and URIARTE for Solar, and defendants GONZALEZ and GARCIA, would and did transmit and cause to be transmitted approximately $9,960,432.40 in bribe money to Grupo Delta and to defendant BELTRAN for payment to Chavarria and * .

2. Sections 10 and 16 of the *Harvester* Information state:

10. It was a part of the conspiracy that CEI and its president, Donald G. Crawford would and did offer, agree to pay and pay to the Subdirectors of Purchasing and of Production bribes equalling approximately 4.5% of each Pemex purchase order for compression equipment systems in which CEI participated.

16. It was further a part of the conspiracy that CEI, with the knowledge of, among others, defendant SOLAR, through its officers, employees and agents, including McLean and Uriarte, would and did transmit and cause to be transmitted approximately $9,960,432.40 in bribe money to Grupo Delta for payment to the Subdirectors of Purchasing and of Production.

APPENDIX B

Extracts from the United States' 3/1/84 Brief in the Fifth Circuit in *United States of America* v. *Crawford Enterprises, Inc., et al*, Docket No. 84–2064, setting forth allegations by and admissions of the United States in respect to Ignacio DeLeon Martinez and Jesus Chavarria.

1. STATEMENT OF FACTS

1. The Scheme

The scheme charged in the indictment essentially involves a plan to pay Ignacio DeLeon . . . and Jesus Chavarria . . . approximately 5% of each purchase order awarded by Pemex to Crawford Enterprises, Inc. (CEI) or to the other coconspirator companies. The . . . counts in the indictment relate to 14 contracts totaling approximately $225 million obtained from Pemex by CEI, Ruston and Solar. These 14 contracts resulted in the planned payment of approximately $9.9 million in bribes to DeLeon and Chavarria. The $9.9 million in *bribe payments was disguised* in secret pricing computations on each contract *as money for the "folks,"* a code word meaning DeLeon and Chavarria, and *disguised as "commission" payments* sent from CEI to Grupo Delta, a Mexico City corporation. Grupo Delta represented itself as Crawford's agent, but *actually was the conduit for the bribe payments for DeLeon and Chavarria.* When Grupo Delta received funds from CEI, it kept only its share of the monies (two to three percent) and passed on the remaining portion representing bribe payments for the Pemex officials. Through an elaborate process of laundering transactions designed to conceal both the source and the recipient of the CEI monies, Grupo Delta fulfilled its role as conduit. In fact, Grupo Delta performed its task so well that *there are no eyewitnesses to any delivery of funds to DeLeon or Chavarria.*

The Government's evidence of the bribe scheme consists of the following:

1. Witnesses who *will testify* to the *establishment of the plan* to pay the 5% to DeLeon and Chavarria and

define the codeword "folks" as meaning DeLeon and Chavarria;

2. Pricing documents that will establish the bribe amounts included in each of the 14 contracts involved in the indictment;

3. Checks and other accounting records from CEI that will link the Grupo Delta payments to particular contracts;

4. Bank records that will trace each CEI check payable to Grupo Delta to an account in the name of Camarillo at Multibanco Comermex in Mexico City; and

5. Bank records of the Camarillo account will reflect disbursement of the monies in *a manner consistent with the plan* and corroborate the testimony as to *how the plan was to be implemented.*

CEI monies have been traced through Grupo Delta to checks payable to Swiss Volksbank in Zurich in eight separate instances. The negotiable instruments payable to Swiss Volksbank were each purchased by someone from Grupo Delta. On each occasion, the source of funds for these purchases was CEI. At no time did Grupo Delta receive sufficient funds from any other source to pay for these transfers . . . . (Emphasis supplied and footnote 2 omitted).

at pages 4, 5

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The Excluded Evidence.

The trial court's January 24, 1984 ruling has excluded evidence proving eight transfers involving twelve negotiable instruments payable to Swiss Volksbank obtained through Grupo Delta with CEI monies. Other documentary evidence now barred includes . . . the Swiss court records regarding the objections of DeLeon and Chavarria to disclosure of the tracing of transactions involving the eight transfers.

Through careful analysis and tracing of the CEI payments, $133,424.75 has been traced directly to one of

DeLeon's* accounts in the United States . . . . *This is the only direct proof of payment. All available additional proof of payment is circumstantial.* These transfers total approximately $5.2 million, well over half of the $9.9 million *planned and intended* for Chavarria and DeLeon.

In the absence of direct evidence from eywitnesses or Swiss Volksbank, the question becomes what, if anything, links DeLeon and Chavarria to the monies transferred to Switzerland. (Emphasis supplied and footnote 3 omitted).

at pages 6, 7

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On June 15, 1978, DeLeon wrote a check for $1,000 from his account in McAllen, Texas. On July 3, 1978, this check was date stamped at Swiss Volksbank. On the same date, Chavarria was in Zurich.

at page 8

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SUMMARY OF ARGUMENT

. . . Therefore, it is evident that all relevant circumstantial evidence *tending to establish* the existence of the *bribe payments* is admissible.

The United States maintains that the documents reflecting each of the eight transfers of CEI funds from Grupo Delta to Swiss Volksbank are *admissible as circumstantial evidence* of the further implementation of the bribery scheme. *Whether the United States ever obtains the direct evidence,* i.e., the Swiss Volksbank records, has no bearing on the admissibility of these excluded items . . . The multiple launderings of bearer instruments before purchase of a bank draft payable to a foreign bank are clearly circumstantial evidence *tending to establish* that the disbursements were

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* A schedule "Tracement of Grupo Delta Dispersements" (Document 308B-2) attached to the 3/1/84 Brief as Appendix p. 4 shows $133,424.75 being deposited in an account designated Proquimex S.A. (Ignacio DeLeon) and a schedule at page 5 contains a notation that Proquimex S.A. is owned by Ignacio DeLeon.

being handled in *a secretive and clandestine manner consistent with the purpose and plan of the bribery scheme.*

The Swiss police hotel records and charge account receipt records showing the presence of DeLeon and Chavarria in Zurich, (where Swiss Volksbank is located) on the same dates that negotiable instruments *intended* for them were negotiated, likewise connects the *intended recipients to the bribe monies* . . .

• • •

The objections to the release to the United States of the Swiss bank records showing the tracing and negotiation of these eight transfers, filed in July 1983 by DeLeon and Chavarria in Switzerland, *tends to connect DeLeon and Chavarria to the eight transfers being traced* . . . (emphasis supplied)

at pages 10, 11

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II. The Excluded Circumstantial Evidence Was Relevant and Was Not Prejudicial

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A. Relevancy

• • •

Certainly a *central hypothesis* of this case, and *a disputed issue*, is that the Pemex officials, DeLeon and Chavarria, were to receive bribe payments. . .

at pages 15, 16

These bearer instruments are not the only evidence linking the payments from CEI to the "folks" and to Swiss Volksbank. DeLeon's personal check dated June 15, 1978 payable to Swiss Volksbank is also proof *tending to link* DeLeon to Swiss Volksbank . . . It is documentary proof *tending to link DeLeon* to the bank. . .

Likewise, the Swiss police hotel records for DeLeon and Chavarria, and DeLeon's American Express records, establish the presence in Zurich, Switzerland of DeLeon and

> Chavarria, both together and separately, on certain crucial dates corresponding with the negotiation of DeLeon's check and the first two transfers from Grupo to Swiss Volksbank. Their presence at the time of these initial transfers is *significant. The presence of an intended bribe recipient* in a foreign city over 5,000 miles from home *when funds intended for him* are negotiated at a bank in the same foreign city is circumstantial proof *tending to link that bribe recipient,* in this case the Pemex official, *to receipt of the bribe funds from CEI* . . .
>
> Finally, Swiss court records, particularly the powers of attorney signed by DeLeon and Chavarria, indicate that DeLeon and Chavarria objected to our attempts to trace these eight transfers further. Their financial interest in the proceeds of these distributions, *which can be inferred from their objections to the release* of that information, *conclusively links* them to the bribe funds and *tends to establish the completion of the bribe payment* chain to the *intended* recipients. (Emphasis supplied)

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> The fact that the evidence on this issue *is circumstantial rather than direct* does not affect either its relevance or its admissibility.

at page 19